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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Mark Brnovich, in his official capacity as
Attorney General of Arizona; the State of
Arizona; and John Doe,

Plaintiffs,

v.

Joseph R. Biden in his official capacity
as President of the United States;
Alejandro Mayorkas in his official
capacity as Secretary of Homeland
Security; United States Department of
Homeland Security; Troy Miller in his
official capacity as Senior Official
Performing the Duties of the
Commissioner of U.S. Customs and
Border Protection; Tae Johnson in his
official capacity as Senior Official
Performing the Duties of Director of
U.S. Immigration and Customs
Enforcement; Ur M. Jaddou in her
official capacity as Director of U.S.
Citizenship and Immigration Services;
United States Office of Personnel
Management; Kiran Ahuja in her official
capacity as director of the Office of
Personnel Management and as co-chair
of the Safer Federal Workforce Task

No. 2:21-cv-01568-MTL

**STATE PLAINTIFFS' REPLY IN
PLAINTIFFS' MOTION FOR
EXPEDITED BRIEFING**

1 Force; General Services Administration;
2 Robin Carnahan in her official capacity
3 as administrator of the General Services
4 Administration and as co-chair of the
5 Safer Federal Workforce Task Force;
6 Office of Management and Budget;
7 Shalanda Young in her official capacity
8 as Acting Director of the Office of
9 Management and Budget and as a
10 member of the Safer Federal Workforce
11 Task Force; Safer Federal Workforce
12 Task Force; and Jeffrey Zients in his
13 official capacity as co-chair of the Safer
14 Federal Workforce Task Force and
15 COVID-19 Response Coordinator

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Defendants.

1 Plaintiffs Mark Brnovich, in his official capacity as Attorney General of Arizona
 2 and the State of Arizona (hereinafter, the “State”) respectfully submit this reply in
 3 support of Plaintiffs’ motion for an expedited briefing schedule (Doc.36) for Plaintiffs’
 4 Motion for a Temporary Restraining Order and Preliminary Injunction (Doc. 34).¹ This
 5 Reply addresses only the Contractor Claims, while John Doe may reply separately
 6 regarding the Employee Claims.

7 With respect to the Contractor Mandate, Federal Defendants claim (at 4) that
 8 “any exigency that exists here is of Plaintiff’s own making.” Not so. The scope of the
 9 State’s harms only became clear when the Biden Administration revealed how
 10 sweepingly it intends to apply the Contractor Mandate to *State* agencies, subdivisions,
 11 and other entities. It was only announced *last Friday* that Arizona universities would be
 12 implementing vaccination mandates as a *direct result* of Biden Administration pressure.²
 13 In that, Arizona universities are hardly unique: it only became clear throughout the
 14 nation that the Biden Administration intended to use the Contractor Mandate to usurp
 15 from States lawmaking authority over their own state universities and other agencies:
 16 “Some [colleges] are still trying to confirm how the executive order applies, others are
 17 still figuring out implementation, and some might be weighing whether to challenge the
 18 order in court.”³ And universities are but one aspect of the sweeping assertion of federal
 19 power over state entities. The Biden Administration, for example, apparently intends to
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21 ¹ This Reply is not submitted on behalf of John Doe, who is separately represented, and
 22 may also file a reply.

23 ² See, e.g., https://tucson.com/news/local/ducey-reviewing-mask-mandates-at-arizona-universities/article_a21bc826-305d-11ec-a262-633b4b233a94.html;
 24 <https://mohavedailynews.com/news/135023/arizona-universities-to-require-covid-19-shots-for-employees/>;
 25 <https://kjzz.org/content/1726081/gov-doug-ducey-isnt-happy-about-universities-requiring-vaccines-what-can-he-do-about>.

26 ³ <https://www.mcclatchydc.com/news/nation-world/national/article255090947.html> (Oct. 29, 2021).

1 apply its Contractor Mandate to the State's own Civil Rights Division. *See* First
2 Amended Complaint ¶4.

3 The State of Arizona has a law that prohibits "this state and any city, town or
4 county of this state ... from establishing a COVID-19 vaccine passport or requiring ...
5 the following 1. Any person to be vaccinated for COVID-19." A.R.S. §36-681(A). The
6 State will be arguing on November 2 at the Arizona Supreme Court whether this law
7 was validly passed as part of the budget. The federal contractor mandate is preventing
8 the State from effectuating its laws by purporting to override them. The State is entitled
9 to expedited consideration of that harm.

10 Defendants' diminishment of the State's harms is further belied by their own
11 position: if little will occur in the window between when expedited and ordinary briefing
12 would be complete, respectively, why are they completely unwilling to stay the
13 Mandates in that time period? It is precisely *because* so many of the harms at issue will
14 occur in that window of time that Defendants are unwilling to agree to a short stay.

15 But if Defendants intend to press full-speed ahead with their Mandates, they can
16 hardly expect courts to give them non-expedited briefing schedules to address the
17 legality of those mandates.

18 RESPECTFULLY SUBMITTED this 22nd of October, 2021.

19 **MARK BRNOVICH**
20 **ATTORNEY GENERAL**

21 By: /s/ Brunn W. Roysden III

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26 *Attorneys for Plaintiffs Mark Brnovich, in his
official capacity as Attorney General of
Arizona; and the State of Arizona*

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of October, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the District of Arizona using the CM/ECF filing system. Counsel for all parties are registered CM/ECF users and will be served by the CM/ECF system pursuant to the notice of electronic filing.

/s/ Brunn W. Roysden III

*Attorney for Plaintiff Mark Brnovich, in his
official capacity as Attorney General of
Arizona; and the State of Arizona*